

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

v.

12 JULIAN LATIMER,

13 Defendant.

14 CASE NO. CR18-0052-JCC

ORDER

15 This matter comes before the Court on Defendant's motion for return of personal
16 property (Dkt. No. 28). Having thoroughly considered the parties' briefing and the relevant
17 record, the Court finds oral argument unnecessary and hereby DENIES the motion for the
18 reasons explained herein.

19 **I. BACKGROUND**

20 In October 2017, Defendant fled when contacted by Seattle Police Department officers.
21 (*Id.*) During the ensuing pursuit, Defendant dropped a firearm and two iPhones. (*Id.*) The police
22 searched Defendant incident to arrest, and discovered drugs, drug paraphernalia, and cash. (*Id.*)
23 The police did not seek a search warrant for the iPhones. (*Id.*)

24 Defendant subsequently pled guilty to felon in possession of a firearm and possession of
25 methamphetamine with intent to distribute. (*Id.*) On August 7, 2018, Defendant was sentenced to
26 84 months in prison. (*Id.*) Defendant's plea agreement contained a waiver of appeal and a waiver

1 of a right to collaterally attack the conviction and sentence except for claims of ineffective
2 assistance of counsel. (*Id.*; Dkt. No. 16.) Defendant now moves for the return of the two iPhones
3 to his mother. (Dkt. Nos. 28, 28-2)

4 **II. DISCUSSION**

5 Federal Rule of Criminal Procedure 41(g) provides:

6 A person aggrieved by an unlawful search and seizure of property or by the
7 deprivation of property may move for the property's return. The motion must be
8 filed in the district where the property was seized. The court must receive evidence
9 on any factual issue necessary to decide the motion. If it grants the motion, the court
10 must return the property to the movant, but may impose reasonable conditions to
11 protect access to the property and its use in later proceedings.

12 A defendant's seized property is ordinarily returned at the end of trial pursuant to a
13 motion made under Federal Rule of Criminal Procedure 41, unless "the defendant is not entitled
14 to lawful possession of the seized property, the property is contraband or subject to forfeiture or
15 the government's need for the property as evidence continues." *United States v. Van*
16 *Cauwenbergh*, 934 F.2d 1048, 1061 (9th Cir. 1991). If the property at issue "is no longer
17 needed for evidentiary purposes . . . [t]he person from whom the property is seized is presumed
18 to have a right to its return, and the government has the burden of demonstrating that it has a
19 legitimate reason to retain the property." *United States v. Martinson*, 809 F.2d 1364, 1369 (9th
20 Cir. 1987) (footnotes omitted).

21 If Defendant were to successfully overturn his conviction and sentence and the case
22 proceeded to trial, the iPhones may be material evidence in the subsequent proceedings. For
23 example, the content of the iPhones may be relevant to the charge of possession of
24 methamphetamine with intent to distribute alleged in the Government's criminal complaint
25 against Defendant. (Dkt. No. 1) The Government's decision to not apply for a search warrant
26 pertaining to the iPhones is not dispositive on the Government's view as to whether the iPhones
have any evidentiary value. Thus, the Government has demonstrated that it has a legitimate
reason to retain the two iPhones at this time.

1 Also, the Government has stated that it anticipates returning the iPhones to Defendant's
2 designee on or about August 8, 2019, which is the date Defendant would be time-barred from
3 attacking his conviction and sentence under to 28 U.S.C. § 2255. The voluntary return of the
4 iPhones would obviate the need to request their return to Defendant's designee. Further, at such
5 time the Government's evidentiary interest in the iPhones would be significantly reduced, and a
6 renewed motion for their return would likely succeed on the merits.

7 For the foregoing reasons, Defendant's motion for return of personal property (Dkt. No.
8 28) is DENIED.

9 DATED this 17th day of October 2018.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE